IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.878 OF 2006

Laya Binaykumar Pandey ...Petitioner.
Versus
Medical Council of India
and 5 Ors. ...Respondents.

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WITH
WRIT PETITION (L) NO.879 OF 2006

Pallavi Vasant Shinde ...Petitioner.
Versus
Medical Council of India
and 5 Ors. ...Respondents.

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WITH
WRIT PETITION (L) NO.880 OF 2006

Tejas Hemant Mehta ...Petitioner.
Versus
Medical Council of India
and 5 Ors. ...Respondents.

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WITH
WRIT PETITION (L) NO.881 OF 2006

Sheetal Babanrao Dherange ...Petitioner.
Versus
Medical Council of India
and 5 Ors. ...Respondents.

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WITH
WRIT PETITION (L) NO.882 OF 2006

Nagaraja Vittala Pai ...Petitioner.
Versus
Medical Council of India
and 5 Ors. ...Respondents.

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WITH
WRIT PETITIN (L) NO.883 OF 2006

Jignesh Kirankumar Ved ...Petitioner.
Versus
Medical Council of India
and 5 Ors. ...Respondents.

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WITH
WRIT PETITION (L) NO.884 OF 2006

Rahul Ravindra Narkhede ...Petitioner.
Versus
Medical Council of India
and 5 Ors. ...Respondents.

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WITH
WRIT PETITION (L) NO.885 OF 2006

Urvi Bipin Maheshwari ...Petitioner.
Versus
Medical Council of India
and 5 Ors. ...Respondents.

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WITH
WRIT PETITION (L) NO.886 OF 2006

Saddi Vishal Kamaldev ...Petitioner
Versus
Medical Council of India
and 5 Ors. ...Respondents.

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WITH
WRIT PETITION (L) NO.887 OF 2006

Paryani Mukesh Jawaharlal ...Petitioner.
Versus
Medical Council of India
and 5 Ors. ...Respondents.

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Mr.V.M.Thorat, Advocate for the Petitioner.

Ms.Simran Puri i/b. De Juri Advocate for Respondent No.1.

Mr.R.V.Govilkar, Advocate for Respondent No.6.

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CORAM : **F.I.REBELLO AND SMT.V.K.TAHILRAMANI,JJ.**

DATED : **JUNE 23, 2006.**

ORAL JUDGMENT (PER REBELLO, J.) :

1. All these petitions are being disposed of by a common order as the issue involved is the same. The petitioners are prosecuting their M.B.B.S. Course in colleges affiliated to the Maharashtra University of Health Sciences (hereinafter referred to as University), having been admitted to a medical course. It is the case of the petitioners that they have passed their first and second M.B.B.S. examinations. They have also passed third M.B.B.S.(Part-I) examination. They appeared for third M.B.B.S.(Part II) examinations conducted by the University in December 2005, the results of which were declared on 18.2.2006. In the result

declared, some petitioners were declared to have failed in the subject "General Surgery" and some petitioners in the subject "General Medicine". The mark sheets were displayed on the website of the University and the copies of the same were also provided to the students. It is the case of the petitioners that on perusal of the mark sheets, it would reveal that the petitioners had either failed in the practical paper of the subject "General Surgery" and or "General Medicine" and as such had been declared to have failed in the said examination.

2. The Respondent No.1 Medical Council of India is a statutory body established under the provisions of Indian Medical Council Act, 1956. The act is a central legislation enacted by Parliament. Under Section 33 of the Act, the Council is empowered to frame regulations in a manner provided, so as to achieve the object provided under the Act. The regulations framed by the Medical Council of India under Section 33 are thus made binding on all the Universities and medical institutions imparting medical training

and/or conferring degrees. The institutions which conduct medical courses must do so in confirmity with the regulations framed by the Medical Council of India. No medical institution or University, it is submitted, can ignore the mandatory regulations framed by the above statutory body and/or can frame its Rules which are contrary or inconsistent with the regulations framed by the Medical Council of India. The Medical Council of India under its regulations framed under Section 33 has framed regulations, which impel and include the commencement and duration of the course and the method of assessment and standard of passing. In the instant case we are concerned with the regulation prescribed by the Council in relation to the method of assessment and standard of passing. The Medical Council has framed regulations on graduate medical examination in the year 1997, in exercise of the powers conferred under Section 33 of the Act. The regulations inter alia provide for the manner in which students are to be tested in the examinations, distribution of the marks in each paper and the minimum marks required for declaring the student

as having passed in the subject and course. In terms of the regulations framed, the distribution of marks in the various disciplines is as under :

"12(4) DISTRIBUTION OF MARKS TO VARIOUS DISCIPLINES:

(A) First Professional examination: (Pre-clinical Subjects):-

(a) Anatomy:

Theory-Two papers of 50 marks each. (One applied question of 10 marks in each paper)	100 marks
Oral(Viva)	20 marks
Practical	40 marks
Internal Assessment (Theory-20;Practical-20)	40 marks
Total	200 marks

(b) Physiology including Biophysics

Theory-Two papers of 50 marks each (One applied question of 10 marks in each paper)	100 marks
Oral(Viva)	20 marks
Practical	40 marks
Internal Assessment (Theory-20; Practical-20)	40 marks
Total	200 marks

(c) Biochemistry:

Theory-Two papers of 50 marks each (One applied question of 10 marks in each paper)	100 marks
Oral(Viva)	20 marks
Practical	40 marks
Internal Assessment (Theory-20;Practical-20)	40 marks
Total	200 marks

Pass: In each of the subjects, a candidate must obtain 50% in aggregate with a minimum of 50% in Theory including orals and minimum of 50% in Practicals."

. We may also gainfully referred to Regulation 12(2) which reads as under :

"12(2) INTERNAL ASSESSMENT :

(i) it shall be based on day to-day assessment(see note), evaluation of student assignment, preparation for seminar, clinical case presentation etc.;

(ii) regular periodical examinations shall be conducted throughout the course. The question of number of examinations is left to the institution;

(iii) day to day records should be given importance during internal assessment;

(iv) weightage for the internal assessment shall be 20% of the total marks in each subject;

(v) student must secure at least 35% marks of the total marks fixed for

internal assessment in a particular subject in order to be eligible to appear in final university examination of that subject."

. It is submitted that on reading of the said regulation, it would be clear that to pass the examination, the candidate must obtain 50% of the aggregate marks in theory+oral+internal assessment of theory and 50% of the aggregate marks in practical + internal assessment/clinical. The regulation also provides for grace marks to be awarded. The 35% requirement enables the student to appear for the University final examination.

. The University had earlier framed regulations, we are concerned with Regulations 56.2 and 57, which reads as under:

"**56.2.** Heads of passing of various courses in their respective faculties will be as under :-

56.2.1. Medical :-

i. Theory + Oral

ii. Practical

iii. Internal Assessment(Theory+Practical)

57. The standard of passing : A candidate to be eligible to pass the examination must have obtained not less than 50% of marks in each of the heads of the respective subject."

3. The University in 2003 followed regulations 56 & 57 in declaring the results of the final examination. Several students aggrieved, filed Petitions before this Court i.e. Writ Petition No.5725 of 2003 and other Writ Petitions. A learned Division Bench of this Court, was pleased to dispose of the Writ Petitions by order dated 12th December, 2003. The learned Division Bench was pleased to observe as under :

"The requirement of obtaining 50% of the total marks fixed for Internal Assessment is clearly spelt out by Regulation 12. What has been provided by Rule 57 is same. That is to say a candidate must obtain not less than 50% of the total marks prescribed for Theory, Practical and Internal Assessment separately. It only explains what has been ordered by Medical Council of India. Medical Council of India asserts that he must secure 50% of marks. University asserts he must secure so in each of the three heads. This cannot therefore be termed as inconsistent Rule with the Regulation of Medical

Council of India."

. After so saying, the learned Bench was pleased to observe that in its opinion, there is no inconsistency nor can it be inferred from Regulation 12, that the Council always desired to club internal assessment in theory and practicals. Regulation 12 clearly provides for different marks for such heads. After so holding the learned Division Bench was pleased to observe that Rules 56 and 57 of Ordinance No.1 of 2002 as framed by the Health University are not in any manner inconsistent with Regulation 12 as framed by the Council, insofar as they required a student to pass all the three heads with 50% marks i.e. (1) theory, (2) practical and (3) internal assessment. In view of that, the Petitions came to be dismissed.

4. The very issue and regulations of Medical Council of India were also in issue before a learned Division Bench of the Kerala High Court. A learned Bench of the Kerala High Court considered the affidavit filed by one Dr.

K.K.Arora, Joint Secretary of Medical Council of India and also considered the clarification issued by the Medical Council of India. The learned Division Bench while disposing of the petition was pleased to hold as under :

> "6. In the result, we hold that under the Regulations a candidate shall be declared to have passed if he has got 50% of the aggregate marks in University theory + orals + internal assessment theory and 50% of the aggregate marks in University practicals + internal assessment practicals/clinicals."

. In other words, insofar as the Kerala High Court is concerned the view taken was that internal marks must be added to the respective subjects in theory and practicals and then the aggregate of 50% should be worked out. This judgment was pronounced on 25th September, 2002. It appears that this judgment considering that Medical Council is an all India body and the Act is a central act was not brought to the attention of the learned Bench of this Court which decided the earlier batch of petitions. Counsel for the Respondent University states that it was brought

to the notice, but we find no reference to the judgment, in the judgment of the Division Bench of this Court.

5. Subsequent to the judgment of this Court, the University has amended Rule 57 of the ordinance as can be seen from Notification dated 20.02.2006 and the Rule 57 of the ordinance now reads as under :

"'HEAD OF PASSING' AND 'STANDARD OF PASSING' WILL BE AS UNDER :-

HEAD OF PASSING	STANDARD OF PASSING
(A) Theory+Oral	50% marks.
(B) Practical/Clinical	50% marks.
(C) Internal Assessment (Theory+Practical)	35% marks(for eligibility) (Refer Notification No.09/2006)
(D) Aggregate of all the Above mentioned heads of passing.	50% marks.

. Rules 56 & 57 of Ordinance 01/2002 (Amended) will be suitably amended. All students should be informed accordingly.

. It is this Rule as amended, which is the subject matter of the present Petitions.

6. On behalf of the Medical Council of India, Shri.Ashok Kumar Harit, Deputy Secretary, has filed an affidavit. It is set out that regulations were framed by the Medical Council of India under Section 33 with the prior approval of the Central Government. All such regulations are statutory in character and are binding and mandatory regulations based on the judgment of the Apex Court in the cases of MCI Vs. State of Karnataka (1998) 6 SCC 131 and Dr.Preeti Srivastava Vs. State of M.P. & Ors. (1999) 7 SCC 120. The Medical Council in exercise of its powers conferred by Section 33 of the Act and after obtaining prior permission of the Government made regulations being "Regulations on Graduate Medical Education, 1997" for the purpose of regulating Medical Education in the country on 4.3.1997 and which have been published in the Official Gazette of India on 17.5.1997. In Para-9 it is then set out that even though internal assessment is separately marked on a 50-50 basis for theory and practical respectively, it is clubbed with the performance in the practical/clinical examination, whereas the

viva-voce performance is clubbed with the performance in the Theory examination. It is set out that internal assessment marks are to be clubbed with the practical/clinical performance. They do not form a separate or independent passing head. Reference is then made to Rules of University and it is submitted that the Rules have to be read in such a manner so as to remain in confirmity with the provisions of Regulation 12 of 1997 Regulations of the Council.

. Reference is then made to Exhibit R-1/1 dated 17.09.2002, which provides the manner in which the marks are to be distributed. It would be gainful to reproduce the same :

> Distribution of marks for various disciplines have been provided under Sub Regulations (4) of Regulation 12. For example the marks for Anatomy are as follows:-
>
> "(A) First Professional examination:(Pre Clinical subjects):-
>
> (a) Anatomy:
>
> Theory - Two papers of 50 marks each
>
> (One applied question of 10 marks in each paper) 100 marks

Oral(Viva)	20 marks
Practical	40 marks
Internal Assessment (Theory-20, Practical-20)	40 marks
Total	200 marks."

. It may be observed from the above that out of the total 200 marks for the subject of Anatomy, 40 marks i.e. 20% of the total marks have been provided for internal assessment (theory - 20 and practical - 20). As regards the candidate obtaining 50% in aggregate with minimum of 50% in theory including orals and minimum of 50% in Theory including orals and minimum of 50% in practical prescribed under "distribution of marks of various disciplines", it may be pointed out that so far as Anatomy is concerned, a student has to obtain a minimum of 70 marks in theory out of a total of 140 marks (100+20+20=140) and a minimum of 30 marks out of a total of 60 marks in practical (40+20). Further, the student has also to obtain a minimum of 35% of marks in internal assessment prescribed for each subject. For example, in Anatomy, he has to obtain a minimum of 20 marks out of total 40 marks earmarked for internal assessment. Thus there is no contradiction in the percentage of marks prescribed for passing of an examination as per the regulations."

7. On behalf of the University Shri.Govind Prabhakar Jadhav, Deputy Registrar, has filed an affidavit. It is pointed out that Rules 56 & 57 of Ordinance 01 of 2002 as framed by the University, have been held not to be inconsistent with Regulation 12 as framed by the Medical

Council of India. In terms of the judgment, a student has to pass in all the three heads with 50% marks, namely in, 1.Theory, 2.Practical/clinical, and 3.Internal Assessment. Reference is made to the examination form and the specific declaration given by all the students, declaring that the students have gone through the syllabus prescribed, the Ordinance and the Rules. It is submitted that the petitioner is not entitled to challenge the Rules which have been in existence since 2003 and which have been applied for examinations conducted thereafter wherein the petitioner herein had appeared. Insofar as securing 50% in internal assessment, that has been reduced to 35% and the Medical Council has enacted the same by its notification dated 15.10.2003.

. Reference is then made to Regulations. It is then set out as under :

> "9. It is submitted that from the Regulations of the Medical Council of India as well as University the following position emerges:
>
> (i) The student must secure 35%, in the Internal Assessment (Theory+Practical) being

> the eligibility criteria to appear for the examination, as per the Regulations No.12 (2)(v) of Regulations on Graduate Medical Education, 1997, as amended by notification dated 15.10.2003;
>
> (ii) The student must pass Theory + Oral with 50% minimum;
>
> (iii) The student must obtain 50% minimum marks in Practical / Clinical;
>
> (iv) The student must obtain 50% minimum as aggregate of the above mentioned three heads of passing."

. It is, therefore, set out that internal assessment is a separate head of passing, in which a candidate must have to obtain 50% marks failing which the student would be declared to have failed.

8. From the above pleadings, the question which really would arise is whether Rule 57 as framed by the University is ultra vires Regulation 12 of the Regulations framed by Medical Council of India.

. To answer the issue, we may first consider the contentions advanced on behalf of the University that once the Division Bench of this

Court has taken a view in Writ Petition No.5725 of 2003 and other Petitions decided on 12.12.2003, it is not open to this Court to take a view different from the view taken by the earlier Bench. If the Court is inclined not to accept that view, the proper step would be to refer the matter to a larger Bench. We have no difficulty in accepting that proposition. The question is whether in this case, if we come to the conclusion that the Rules as framed by the University are inconsistent with the Regulations of Medical Council of India, we should refer the matter to a larger Bench.

. Firstly, as we may point out that the learned Division Bench was considering the Rules before their amendment. Rules 56 & 57 have been subsequently amended and notified by notification Nos.04/2006 & 05/2006 both dated 20.02.2006. From the notification it appears that the amendment has been done to give effect to the judgment of this Court. Whatever be the position, the fact would remain that what is in issue before us are the new Rules as framed by the University and considering the new Rule, whether we should follow the ratio

of the judgment delivered in Writ Petition No.5725 of 2003 in the case of **Ms.Sheetal A. Abhyankar and Ors. Vs. Maharashtra University of Health Sciences and Ors.** decided on 12th December, 2003 ?.

. The second aspect of the matter is that it appears that the clarification issued by the Medical Council of India on 17.9.2002 was not brought to the attention of the learned Division Bench. Though the learned Bench referred to this affidavit filed on behalf of the Medical Council of India, no reference is made to that clarification. A third aspect of the matter is the view taken by the Kerala High Court a Court of coordinate jurisdiction. Though the view is not binding, it had a persuasive value. A view of a Court of coordinate jurisdiction considering that the Medical Council of India is constituted under a Central Act and had framed the Regulations under that Act ought to have been considered or distinguished as normally there ought not to be different interpretations of the same provision in different states. Courts of coordinate

jurisdiction as far as possible, if a view taken by a Court of coordinate jurisdiction is a view capable of being taken, should normally adopt the same, unless it found that the view cannot be sustained in view of the language of the enactment. The judgment was not adverted to at all.

. We are, therefore, clearly of the view that it is open to us considering Rule 57 as now amended, to consider the true impact of the Rules 56 and 57 as amended and whether they are inconsistent with the Regulations framed by the Medical Council of India under powers conferred on it under Section 33 of the Act.

9. We may now proceed to examine the stand of the Medical Council of India. It may be made clear that the Regulations have been made by the Medical Council, in exercise of the powers delegated to it. In other words, the Regulations are sub-ordinate legislation. Similarly, the University has also made the Rules as a delegate and is also an exercise in sub-ordinate

legislation.

. The first question that we will have to answered is whether Rules 56 & 57 are inconsistent with Regulation 12 and if inconsistent what is the effect. As explained by the Medical Council, the distribution of marks is under the heads Theory and Practicals. The marks for internal assessment are both for Theory and Practical to the extent of 20%. Insofar as the internal assessment is concerned, the first requirement is that the student must secure at least 35% marks in internal assessment in order to be eligible to appear for the final University examination. In other words it is only when a student secures minimum 35% marks, does the student become eligible to be admitted for the final University examination. The second aspect, according to the Council, is that the marks obtained in the internal assessment are not to be treated under a distinct head or subject. This can be supported by the language of Regulation 12(2)(iv), which states that weightage for the internal assessment shall be 20% of the total marks in each subject. This was not noted

by the learned Division Bench whilst deciding the case of Sheetal Abhyankar (Supra). Insofar as the marks obtained for theory in the internal examination, those marks will be added to the marks obtained in theory for the final examination and similarly the marks assigned to practicals of internal assessment, would be added to the marks obtained in practicals at the final examinations. In other words, there is no requirement that the student must secure 50% aggregate in internal assessment as a distinct head. Internal assessment only requires that the student obtain 35% marks in order to enable the student to appear for the examination. Once a student secures 35%, then the marks obtained in internal assessment are to be added to Theory and Practical papers respectively in terms of Regulation 12(4). In our opinion, therefore, a reading of Regulation 12 with the clarification dated 17.9.2002, leaves no manner of doubt that the marks obtained in internal examination will have to be added with the marks obtained at the final examinations for Theory and Practicals respectively and cannot be adjudged under independent head. This view was

accepted by the learned Division Bench of the Kerala High Court in the case of **K.Fahad Mohamed and Ors. Vs. Calicut University and Ors.** decided on 25th September, 2002 in WA.No.1777 of 2002(c).

. The other aspect is that when a body making the sub-ordinate legislation, clarifies the meaning of the Rule it has made, in the absence of absurdity or that clarification being clearly contrary to the language of the Regulation or the Parent Act, normally the Court should accept the interpretation, as the maker of the Rule would be the best person to know the object behind the Rule and how they understood the Rule when it was framed. In the instant case, from the affidavit filed on behalf of the Medical Council, the Rule as they understood it, has been explained. Under the regulation the marks obtained in the Theory and Practical examination for internal assessment are to be added to the marks of theory and practicals at the final examinations and are not to be counted as a separate head. As a separate head, it is limited to obtaining 35% marks for

being eligible to appear for the examinations. We are, therefore, clearly of the view that the explanation given by the Medical Council of India to Regulation 12 should be accepted.

10. That leave Us with the next question, as to whether Rules 56 and 57 are contrary to Regulation 12(4). We are clearly of the opinion that Rule 57 as now amended is clearly ultra vires Regulation 12 of Medical Council of India Regulations the rule being inconsistent with the Regulations. Rule 57 has been made by the delegate under the State Act. Regulation 12 has been enacted by a delegate, under the Central Act after following the due procedure. Considering that the Central Act holds the field, which has conferred power on the Council to make Regulations, any provision of law inconsistent with that, will have to be held to be ultra vires. To that extent Rule 57(D) which seeks to hold that the Internal Assessment is a independent head of passing is clearly violative of Regulation 12 and will have to be declared as null and void. The marks obtained in the Internal Assessment, both Theory and

Practical, will have to be added to the Theory + Oral and Practical/Clinical marks in terms of the Medical Council of India Regulations as clarified. The candidate would have to obtain 50% marks in theory and practical, in the subject and also obtain aggregate of 50% marks. Insofar as Rule 56.2.1(iii) is considered that does not deal with the subject, as Rule 56.2, is Heads of Passing. That Rule will have to be read with Rule 57 as it now stands.

11. Once we hold that Rule 57(D) is ultra vires, the Respondent University will have to recalculate the marks based on what we have stated and as how we have understood the Regulation 12 as clarified by Medical Council of India. In the light of that Petitions made absolute in terms of prayer clauses (a), (b), (e) and partly in terms of prayer clause (c) to the extent of Rule 57(D) in terms of notification No.05/2006 dated 20.02.2006

[F.I.REBELLO,J.]

[SMT.V.K.TAHILRAMANI,J.]